

REMARKS

Applicants respectfully request consideration of the evidence of the state of the art teaching away from the claimed invention provided in this Supplemental Response containing the Aastrup Declaration. Claims 1-5, 8-10 and 23-28 are pending.

35 U.S.C. §103 Rejection

Claims 1-5 and 8-10 and 23-28 were rejected as unpatentable under 35 U.S.C. §103 over Josse et al. (U.S. Patent 5,852,229). One issue raised by the Examiner during the interview was that Josse et al. suggests changing electrode size to effect sensitivity, although the Examiner could not point out where Josse et al. stated this or what Josse et al. suggested with respect to whether electrode sizes should be made bigger or smaller. As a result of the interview and the first time the Examiner has clarified this rejection with regard to electrode size and its relationship to sensitivity, applicants respectfully requested an opportunity to submit evidence of a surprising result to be considered of record herein. The response (Amendment B) was submitted three days following the interview at the three month date (21 December 2007). Applicants respectfully request consideration of this Supplemental Response that is being made only to address the issue of Josse et al. and the state of the art teaching away from the claimed invention with respect to the present invention providing for smaller electrode sizes to improve sensitivity. Specifically, the reason for this request is that the interview was the first instance wherein the Examiner clarified this rejection to allege that Josse et al. provides somewhere (the Examiner alleged) that there is a reasonable expectation of success to change electrode size but not to make electrodes smaller in size.

The claimed invention provides for a much smaller electrode size than was used in the art and Josse et al. with a key upper area limitation in claim 1. Therefore, the claimed invention provides a surprising result of enhancing sensitivity with a smaller electrode size. Moreover, Josse et al. teaches away from the claimed invention by not stating anything with regard to making electrode sizes smaller, only what a person of ordinary skill in the art would know to make electrode sizes larger to increase sensitivity.

Applicants are providing with this Supplemental Response a Declaration of Teodor Aastrup, Ph.D. Under 37 C.F.R. §1.132 ("Aastrup Declaration") to be submitted of record herein. The Aastrup Declaration provides three references (roughly contemporaneous with the priority date of the present patent application but not prior art because they were published shortly after the present priority date) to show the state of the art regarding the relationship between electrode size and sensitivity for QCM electrodes. The three references show that the state of the art was suggesting that electrode areas should be made larger to increase sensitivity, rather than the present invention providing for much smaller electrode sizes.

Accordingly, as Josse et al. does not disclose or suggest making electrode sizes larger or smaller and the three references in the Aastrup Declaration suggest larger electrode sizes, the present invention provides (1) evidence of surprising results over the state of the art, and (2) Josse et al. teaches away from the claimed invention by, at best, pointing to the state of the art in suggesting that electrode sizes should be made larger (not smaller as is claimed in the present invention).

Therefore, this Supplemental Response and the attached Aastrup Declaration, together with the Amendment B submitted on 21 December 2007, provide a more-than-sufficient showing of the patentability of pending claims 1-5, 8-10 and 23-28. Withdrawal of the rejection over Josse et al. is respectfully requested. As the present 35 U.S.C. §103 rejection over Josse et al. is the only remaining rejection, applicants respectfully request allowance of pending claims 1-5, 8-10 and 23-28.

In view of the foregoing remarks, Amendment B filed on 21 December 2007 and Aastrup Declaration, applicants respectfully requests allowance of claims 1-5, 8-10 and 23-28.

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